

FREDDIE COCHRAN
Claimant

SUPERIOR BOILER WORKS
Respondent

KEMPER INSURANCE COMPANY
Insurance Carrier

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ORDER

Respondent appeals from the July 27, 2000, preliminary hearing Order of Administrative Law Judge Bruce E. Moore. The Administrative Law Judge denied respondent's application to terminate claimant's benefits, finding respondent had failed to prove claimant suffered a new and distinct injury on April 21, 1999, but rather that claimant's problems stemmed from the original June 25, 1998, injury to his low back.

ISSUES

Did claimant suffer a new and intervening injury on April 21, 1999, which caused his low back condition to worsen, thereby relieving respondent of its obligation to provide workers' compensation benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant originally suffered accidental injury while working for respondent on June 25, 1998, when he fell approximately six feet into a pit at respondent's facility. Claimant landed on his right leg and back. He was taken to the emergency room with pain in his right flank and low back, including radiating pain down his right leg. Claimant sought no additional medical treatment for his back after the initial hospital visit on June 25, 1998.

Claimant continued working for respondent at his regular duties until February 1, 1999, when he was laid off for economic reasons.

On April 21, 1999, approximately 10 months after the initial work-related accident, claimant experienced a sudden onset of pain in his back when he reached over to pick up a screwdriver while assembling a water bed at his home. Claimant received medical treatment beginning April 23, 1999, with Steven O. Ronsick, M.D. That was the first medical treatment claimant received since the June 25, 1998, incident at work and subsequent hospital visit.

An MRI conducted on May 4, 1999, revealed spinal stenosis and a central disc herniation at L4-5.

Claimant began receiving treatment from Lee R. Dorey, M.D., on August 6, 1999, with Dr. Dorey's treatment continuing through September 23, 1999. Dr. Dorey concluded that the April 1999 incident when claimant was assembling the water bed was "a distinctly greater contributing factor than his lifting at work."

Two separate independent medical examinations were ordered in this matter. The first was with Terrance C. Tisdale, M.D. Dr. Tisdale concluded that the water bed incident was marginally irrelevant with regard to claimant's ongoing back problems. The Administrative Law Judge issued an Order dated December 14, 1999, awarding claimant benefits. It was later revealed that Dr. Tisdale rendered his opinion without benefit of Dr. Dorey's conclusions.

The Administrative Law Judge then ordered a second independent medical examination with C. Reiff Brown, M.D. In his July 18, 2000, medical report, Dr. Brown discussed the fact that claimant's initial 1998 injury rendered symptomatic claimant's preexisting degenerative changes in his low back, particularly at the L4-5 level. He went on to state that the work activities claimant continued performing, as well as his activities of daily living, allowed the progressive migration of the nucleus to the degenerating annulus. Dr. Brown further opined:

The incident that occurred in April, 1999 when he bent over to pick up a screwdriver was the incident that allowed the migrating nucleus to actually break through the annulus resulting in frank herniation as demonstrated in his scans. As you obviously know normal discs do not herniate and actually very few degenerating discs herniate considering the prevalence of degenerative disc disease. Some degenerating discs through ongoing degeneration and injuries such as described in the fall start the process of protrusion with gradual migration of the diseased nucleus through the equally affected annulus setting the stage so to speak for an incident such as bending over to precipitate the actual herniation.

The Administrative Law Judge, after receiving the independent medical examination report of Dr. Brown, found that the incident involving picking up the screwdriver did not

constitute a new “distinct” injury on April 21, 1999. The Administrative Law Judge went on to find that the simple act of bending over acted upon a condition which had earlier been caused by the work-related injury. Respondent’ request to terminate benefits was denied.

After reviewing the medical evidence, the Appeals Board finds that the Order of the Administrative Law Judge should be affirmed. The preponderance of the credible evidence confirms that claimant’s injury on June 25, 1998, rendered symptomatic claimant’s preexisting degenerative changes in his low back. The incident of bending over to pick up a screwdriver on April 21, 1999, appears, as found by Dr. Tisdale, to be largely irrelevant to claimant’s ongoing current back problems. See Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated July 27, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

c: E. Dexter Galloway, Hutchinson, KS
P. Kelly Donley, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director